

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DELTA ASSET MGMT CO., LLC, et al.,

Plaintiff(s),

**REPORT AND
RECOMMENDATION**

-against-

CV 08-3637 (LDW) (WDW)

EEL RIVER INVESTMENT CO., et al.,

Defendant(s).

-----X
WILLIAM D. WALL, United States Magistrate Judge:

This case has been dismissed by stipulation of the parties as to all of the defendants who appeared in the action, *see* Docket Entry [86], but remains open due to the existence of several named defendants who have never appeared. Plaintiffs have not sought default judgments as to any of these parties. On August 16, 2010, the undersigned issued an Order for Written Status Report to the plaintiffs in this action. *See* Docket Entry [87]. The Order directed plaintiffs to inform the court in writing, within ten days of the date of the order, of the present status of this case. The plaintiff was expressly warned that “[f]ailure to respond could result in a recommendation of dismissal of this case.” Despite this warning, plaintiff has failed to respond to the Order.

Rule 41(b) gives the district court power to dismiss a complaint “for failure to comply with a court order, treating noncompliance as a failure to prosecute.” *Simmons v. Abruzzo*, 49 F.3d 83, 87 (2d Cir. 1995). It is well settled that a dismissal under Rule 41(b) “operates as an adjudication on the merits and that such a dismissal is with prejudice.” *Hoffman v. Wisner Classic Mfg. Co.*, 927 F. Supp. 67, 71 (E.D.N.Y. 1996) (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 630-32 (1962)). Here, the plaintiff has failed to comply with the undersigned’s order of August 16, 2010. Accordingly, it is recommended that the case be dismissed with prejudice.

A copy of the Report and Recommendation is being sent to the parties by electronic filing. Any objections to this Report and Recommendation must be filed with the Clerk of the Court within 14 days. *See* 28 U.S.C. §636 (b)(1); Fed. R. Civ. P. 72; Fed. R. Civ. P. 6(a) and 6(d). Failure to file objections within this period waives the right to appeal the District Court’s Order. *See Ferrer v. Woliver*, 2008 WL 4951035, at *2 (2d Cir. Nov. 20, 2008); *Beverly v.*

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Walker, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
October 7, 2010

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge

There has been no objection to the above Report and Recommendation (R&R). Accordingly, the R&R is accepted and adopted. The actor is dismissed with prejudice as to the remaining defendants, and the Clerk of Court is directed to close the file.

SO ORDERED

USD\$.

CENTRAL ISLIP, NY

10/26/10